

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #15	CCRB Case #: 201607067	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/17/2016 3:39 AM	Location of Incident: Front of 358 5th Avenue	Precinct: 14	18 Mo. SOL 2/17/2018	EO SOL 2/17/2018	
Date/Time CV Reported Wed, 08/17/2016 2:43 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/17/2016 2:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			MTS PCT
2. DTS Joseph Bonner	4834	915329	MTS PCT
3. SGT Andrew Ho	5155	941907	MTS PCT
4. POM Thomas Mcaleer	05608	956902	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Cola	14482	960377	MTS PCT
2. POM Gregory Conlon	08246	960388	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
B. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon ethnicity.	
C.DTS Joseph Bonner	Force: Detective Joseph Bonner use physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on the telephone on August 17, 2016.

On August 17, 2016, at approximately 3:39am, § 87(2)(b) and § 87(2)(b) were pursuing an unknown male who had allegedly assaulted § 87(2)(b). After pursuing the man to the vicinity of East 34th Street and 5th Avenue in Manhattan, § 87(2)(b) encountered Detective Joseph Bonner, Police Officer Christopher Cola, Police Officer Gregory Conlon, Sergeant Andrew Ho, and Police Officer Thomas McAleer of the 14th Precinct. While obtaining § 87(2)(b)'s narrative, an unidentified plainclothes officer stated, "I don't speak that shit Spanish" (**Allegation A**). Another unidentified officer then stated, "What kind of language are these monkeys speaking?" (**Allegation B**).

The unknown male was then allowed to leave the area, at which time § 87(2)(b) attempted to strike the male with his fists several times. § 87(2)(b) was pulled off of the unknown male by PO Cola, PO McAleer, and Sgt. Ho. § 87(2)(b) resisted and was eventually handcuffed by DT Bonner. While restraining § 87(2)(b), DT Bonner allegedly twisted § 87(2)(b)'s right thumb, inflicting pain for approximately five seconds (**Allegation C**). § 87(2)(b) sustained a cut to his face and his elbow, as well as a small bruise under his thumbnail. § 87(2)(b) refused medical treatment at the MTS stationhouse.

Video footage was not located for this incident.

This case exceeded 90 days because additional documents were ordered to attempt to identify a subject officer for Allegation A. In addition, several delays occurred in scheduling officer interviews.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b) being arrested in relation to the incident.
- A FOIL request was filed on August 26, 2016 and October 10, 2016. The results of the August 26, 2016 inquiry indicate that no notices of claim were filed in regards to this incident (BR 01). The results of the October 10, 2016 inquiry will be added to the case file upon receipt.

• [REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- This is § 87(2)(b)'s first CCRB complaint (BR 04).

- During his 21 year tenure, DT Bonner has been the subject of 31 prior CCRB allegations involving 12 cases. Two of these allegations were substantiated: Case #201509976 (Abuse-Search of person, Abuse-Search of person). For each substantiated allegation, the Board recommended Command Discipline B. As of the date of this report, the NYPD has not issued its disposition.
- During his 10 year tenure, Sgt. Ho has been the subject of 29 prior CCRB allegations involving 13 cases. Six of these allegations were substantiated: Case #201212149 (Abuse-Stop), Case #201310961 (Abuse-Frisk, Abuse-Stop, Abuse-Stop), Case #201311369 (Force-Physical Force), Case #201311584 (Abuse-Retaliatory Summons). For Case #201212149's stop allegation, the Board recommended Charges. As of the date of this report, the NYPD has not issued a disposition. For Case #201310961's frisk and two stop allegations, the Board recommended Formalized Training. The NYPD disposition was instructions. For Case #201311369's force allegation, the Board recommended Charges. As of the date of this report, the NYPD has yet to issue a disposition. For Case #201311584's retaliatory summons allegation, the Board recommended Charges. As of the date of this incident, the NYPD has yet to issue its disposition.
- During his two year tenure, PO Mcaleer has been the subject of one other allegation. The allegation was unfounded.

Findings and Recommendations

Explanation of Subject Officer Identification

- During her sworn statement at the CCRB on August 19, 2016, § 87(2)(b) described the subject officer of the discourteous statement allegation as a white male, late 30s, average build, 5'8" tall, with blonde hair, and in plainclothes. In the same statement, § 87(2)(b) alleged that the offensive language statement came from a group of officers, though she could not determine which one made the statement. She explicitly stated that it was not the plainclothes officer (BR 3).
- The NYPD Event Information #§ 87(2)(b) lists the primary unit responding as 14A-1. This unit is comprised of DT Bonner, PO Cola, and PO Conlon. In addition, Sgt. Ho and his operator responded to the location. The Event does not list any plainclothes units as responding (BR 6).
- DT Bonner, PO Cola, and PO Mcaleer stated in their CCRB statements, on October 6, 2016, October 7, 2016, and November 23, 2016 respectively that they believed there to be plainclothes officers present at the scene. However, PO Cola stated that he did not see the plainclothes officer he believed to be present, and DT Bonner believed that two were present but did not know who they were. PO Mcaleer stated that he observed plainclothes officers arrive at the end of the incident, however he also did not know who any of the officers were and stated that they did not exit their vehicle (BR 8, 7, 14).
- PO Conlon and Sgt. Ho both stated in their CCRB statements, provided on November 15, 2016 and November 16, 2016 respectively, that they could not recall if plainclothes officers were present during the incident (BR 9, 10).
- § 87(2)(b) does not speak English and thus only knew of the statements made during the incident because § 87(2)(b) informed him afterwards. In his CCRB statement, provided on August 30, 2016, § 87(2)(b) stated that there were two or three

plainclothes officers that were present at the scene (BR 4). He could not offer further details about their actions or when they arrived.

- For the reasons stated above, **Allegations A and B** are being pled against “An officer.”

Allegations not pleaded

- Abuse-Threat of Arrest: § 87(2)(b) stated that while § 87(2)(b) was being placed in a police vehicle, she attempted to cross the street to get to him. While she was attempting to approach § 87(2)(b)'s location, an officer stated that if she did not stop trying to get to § 87(2)(b)'s location she would be arrested. Since § 87(2)(b) was in custody and § 87(2)(b) was attempting to circumvent officers to get to him, the threat of arrest was a statement of fact.
- Abuse-Refusal to provide name or shield number: § 87(2)(b) stated that as § 87(2)(b) was being placed in the police vehicle, she took out her phone to take a picture of the officer's name plate. The officer stated to § 87(2)(b) that she could do so if she wanted. § 87(2)(b) however did not get a picture. § 87(2)(b) could not articulate why she did not take a photo of the officer's name plate. Since she did not ask for the officer's name and the officer did not attempt to prevent her from taking a photo of his name plate, this allegation is not being pled.

Allegation A- Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation B- Offensive Language: An officer made remarks to § 87(2)(b) based upon ethnicity.

As discussed above, § 87(2)(b) alleged that while she was trying to provide her narrative to the officers, a plainclothes officer stated, “I don't speak that shit Spanish.” Among a group of officers that were standing in the immediate area, she alleged that an officer stated, “What kind of language are these monkeys speaking?” (BR 3)

§ 87(2)(b)'s description of the officer who made the first statement, as being in plainclothes, does not fit anyone who has been identified as being present at the incident. Though several officers stated that they believed plainclothes officers to be present, they could not articulate who they were or where they came from. They are also inconsistent about when they arrived.

§ 87(2)(b) alleged that the second statement came from a group of officers, and could not specify which one made the statement.

§ 87(2)(g)

Allegation C -Force: Detective Joseph Bonner used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after being placed in handcuffs, DT Bonner twisted his right thumb for approximately five seconds causing pain. § 87(2)(b) asked him to stop, which he did.

§ 87(2)(b) testified that after the officers allowed the unknown male to leave, as he was walking past § 87(2)(b) and § 87(2)(b) he punched the man four times. Approximately four officers then restrained § 87(2)(b) by placing his hands behind his back. § 87(2)(b)

stated that it took the officers 30 seconds to place him in handcuffs. After he was in handcuffs, DT Bonner was positioned behind him and twisted his finger causing pain. § 87(2)(b) asked DT Bonner to stop, which he did (BR 4).

§ 87(2)(b) testified that as the unknown male walked past them, § 87(2)(b) attempted to punch the man. § 87(2)(b) then stated that eight officers grabbed § 87(2)(b) and pushed him against an SUV. § 87(2)(b) was moving his arms and legs. The officers were directing § 87(2)(b) to stop resisting. § 87(2)(b) could not remember if § 87(2)(b)'s arms or legs made contact with the officers. The officers eventually handcuffed § 87(2)(b). § 87(2)(b) stated that struggle lasted approximately ten minutes (BR3).

DT Bonner stated that as the unknown male was walking away from the area, § 87(2)(b) attempted to strike him four or five times. During the struggle, PO Cola and Sgt. Ho pulled § 87(2)(b) away from the unknown male. DT Bonner stated that § 87(2)(b) was attempting to pull away from the officers. DT Bonner approached § 87(2)(b) and cuffed § 87(2)(b)'s right hand. He then grabbed § 87(2)(b)'s left hand and pulled it back to handcuff. DT Bonner stated that § 87(2)(b) was resisting by attempting to pull his arms towards the front of his body. DT Bonner testified that, after being handcuffed, § 87(2)(b) continued to attempt to pull away from the officers. DT Bonner denied twisting § 87(2)(b)'s thumb, on either hand. He also denied twisting any other finger. DT Bonner stated that he did not observe any other officers do so (BR 8).

PO Cola also testified that as the unknown male walked past § 87(2)(b), § 87(2)(b) attempted to punch the man two or three times. PO Cola and Sgt. Ho then pulled § 87(2)(b) away from the unknown male. § 87(2)(b) then "charged" at PO Cola. § 87(2)(b) pressed his right shoulder into PO Cola's right hip. The force pushed PO Cola back four steps and onto the police vehicle. PO Cola and Sgt. Ho then attempted to pull § 87(2)(b)'s arms behind his back. DT Bonner then approached and placed his handcuffs on § 87(2)(b). PO Cola stated that while restraining and handcuffing § 87(2)(b), he did not observe any officer twist any of § 87(2)(b)'s fingers (BR 7).

Sgt. Ho and PO Mcaleer also testified that they assisted in detaining and handcuffing § 87(2)(b). Both denied seeing an officer twist any of § 87(2)(b)'s fingers while they were attempting to detain him or after (BR 10, 14).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide Procedure 221-01 (BR 11).

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b)

§ 87(2)(g) [Redacted]
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§ 87(2)(g), § 87(4-b) [Redacted]
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[Redacted]

Squad: 15

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date